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No. 86-181

In the Supreme Court of the United States

OCTOBER TERM, 1987

PATRICIA A. DIXON, PETITIONER

v.

WESTINGHOUSE ELECTRIC CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM AND SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

CHARLES A. SHANOR
General Counsel
Equal Employment Opportunity Commission
Washington, D.C. 20507

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MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

The Solicitor General respectfully moves for leave to file the attached supplemental memorandum on behalf of the United States and the Equal Employment Opportunity Commission (EEOC) as amici curiae.

This case presents the question whether the 300-day charge filing period, made applicable by Section 706(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(e), when the complainant "initially institute[s] proceedings" with a state or local agency,

applies where the EEOC and the state or local agency have entered into a worksharing agreement determining that the EEOC rather than the state or local agency will initially process the complainant's charge. On September 4, 1986, we filed a brief as amici curiae in this case. In that brief, we recommended that the Court grant the petition for a writ of certiorari, but we also suggested that the Court might wish to postpone its disposition of the petition because the Fourth Circuit had recently granted rehearing en banc in *EEOC* v. *Ocean City Police Department*, 787 F.2d 955 (1986), which offered an opportunity for the court of appeals to reconsider the panel ruling in this case.

Two subsequent events bear on that earlier recommendation and need to be brought to this Court's attention prior to its disposition of the petition. First, on June 24, 1987, the Fourth Circuit issued its en banc opinion in *EEOC* v. *Ocean City Police Department*, No. 85-1798.* In that opinion, the court of appeals declined to reconsider its ruling in *Dixon* (see slip op. 5 n.3). Second, on June 15, 1987, this Court granted the EEOC's petition in *EEOC* v. *Commercial Office Products Co.*, No. 86-1696. That case raises a related procedural issue under Title VII and, hence, may bear on the appropriateness of also granting certiorari in *Dixon*. We believe that the Court may wish to have our views on the relevance of these two intervening matters before deciding whether to grant the petition in this case.

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* On July 7, 1987, we lodged a copy of that opinion with the Clerk of the Court.

For the foregoing reasons, we respectfully request that the motion for leave to file the attached supplemental memorandum be granted.

CHARLES FRIED
Solicitor General

CHARLES A. SHANOR
General Counsel
Equal Employment
Opportunity Commission

SEPTEMBER 1987

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

On September 4, 1986, the Solicitor General filed, on behalf of the United States and the Equal Employment Opportunity Commission (EEOC), a brief as amici curiae in this case. This case presents the question whether the 300-day charge filing period, made applicable by Section 706(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(e), when the complainant "initially institute[s] proceedings" with a state or local agency, applies where the EEOC and the state or local agency have entered into a worksharing agreement determining that the EEOC rather than the state or local agency will initially process the complainant's charge.

1. In our submission last September, we contended that the decision of the court of appeals is incorrect, is inconsistent with decisions of this Court and of other courts of appeals, and presents an important issue. We accordingly recommended that the Court grant the petition. We also suggested, however, that the Court might wish to postpone its disposition of the petition because the Fourth Circuit had recently granted rehearing en banc in *EEOC* v. *Ocean City Police Department*, 787 F.2d 955 (1986), which offered an opportunity for the court to reconsider the panel ruling in this case.

2. Two subsequent events bear on our earlier recommendation and need to be brought to this Court's attention prior to its disposition of the petition. First, on June 24, 1987, the Fourth Circuit issued its en banc opinion in *EEOC* v. *Ocean City Police Department*, No. 85-1798.[1] In that opinion, the court of appeals declined to reconsider its ruling in *Dixon* (see slip op. 5 n.3). Now that the Fourth Circuit has acted in that case, and left the *Dixon* decision intact, the pending *Ocean City* litigation no longer provides a reason to delay any further disposition of the petition in this case.[2]

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[1] On July 7, 1987, we lodged a copy of that opinion with the Clerk of the Court.

[2] The Solicitor General has recently authorized the filing of a petition for a writ of certiorari in *Ocean City*, which will raise the same timeliness issue already raised by the petition in *Dixon*. The timing of the Court's disposition of the petition in *Dixon*, however, need not be affected by that filing. Should the Court decide to grant review in *Dixon*, the Court should simply hold our petition in *Ocean City* pending the Court's decision in *Dixon*.

A second intervening matter also bears on the appropriateness of further review now in *Dixon*. On June 15, 1987, this Court granted the EEOC's petition for a writ of certiorari in *EEOC* v. *Commercial Office Products Co.*, No. 86-1696, which raises a related procedural issue under Title VII. That case presents the question whether a state agency's decision to defer initial processing of a discrimination charge to the EEOC, pursuant to a worksharing agreement, constitutes a "terminat[ion]" of state "proceedings" within the meaning of Section 706(c) of Title VII, 42 U.S.C. 2000e-5(c), so that the EEOC may immediately deem the charge as filed, rather than being required to wait until sixty days after the commencement of state proceedings. *Dixon* and *Commercial Office Products* raise distinct legal issues, yet they are clearly closely related as a practical matter. Moreover, should this Court reject our view in *Dixon* that the 300-day limitations period is applicable when the worksharing agreement provides for initial processing by the EEOC, the court's opinion would reduce the number of cases turning on the question raised in *Commercial Office Products* whether such a state deferral to the EEOC constitutes a "terminat[ion]" of state "proceedings" under Section 706(c).

If there now appeared to be a reasonable possibility that the Court would address both procedural issues in *Commercial Office Products*, we would recommend that the Court hold the petition in *Dixon* (and the petition soon to be filed in *Ocean City* (see note 2, *supra*)) pending its decision in *Commercial Office Products*. However, the *Dixon* issue of whether the 300-day limitations period is applicable has not been raised in *Commercial Office Products*. Indeed,

the respondent in that case has explicitly disavowed any reliance on the Fourth Circuit's decision in *Dixon*. See 86-1696 Br. in Opp. 9-10 ("Here, completely unlike *Dixon*, the [state fair employment practice agency] clearly indicated that it would take further action on the charge. No argument was ever raised in this case that proceedings were not 'initially instituted' with the [state agency]. Because the facts of this case are so different from the facts in *Dixon*, there is no conflict between the statement here that proceedings were instituted with the state agency and the holding in *Dixon* that they were not."). We cannot therefore reasonably expect that the Court will have the opportunity to address both issues in *Commercial Office Products*. For this reason, we believe it would still be appropriate for the Court to grant the petition in *Dixon*. Due to the close relationship of the two cases, however, the Court might want to schedule the two cases so as to allow for their contemporaneous consideration.

3. It is therefore respectfully submitted that the petition for a writ of certiorari should be granted. Alternatively, the Court may wish to postpone its disposition of the petition pending its decision in *EEOC* v. *Commercial Office Products Co.*, No. 86-1696.

CHARLES FRIED
Solicitor General

CHARLES A. SHANOR
General Counsel
Equal Employment
Opportunity Commission

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